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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 35/2018 concerning Luu Van Vinh (Viet Nam)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 13 December 2017, the Working Group transmitted to the Government of Viet Nam a communication concerning Luu Van Vinh. The Government replied to the communication on 14 March 2018. Viet Nam is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Mr. Vinh is a 50-year-old Vietnamese citizen who resides in Ho Chi Minh City, Viet Nam. According to the source, Mr. Vinh is a social activist, environmentalist, pro-democracy campaigner and human rights defender.

5. On 6 November 2016, while Mr. Vinh and his family were having lunch at their residence, police officers from the Ho Chi Minh City Department of Public Security came to arrest him. At the same time, another group of police officers blocked his house.

6. The source alleges that the police officers beat Mr. Vinh and pushed him to the floor in the presence of his family. The police officers confiscated two mobile telephones belonging to Mr. Vinh and his wife and escorted Mr. Vinh away. Two hours later, the police brought Mr. Vinh back to his house and declared that they had arrested him. The police then searched his house. The source states that they did not show any warrant or other decision by a public authority.

7. The source further alleges that Mr. Vinh was detained incommunicado for over a year. On 12 November 2017, Mr. Vinh was allowed to meet with his family for the first time since his arrest. The authorities permitted this meeting to take place for only 15 minutes. Mr. Vinh was placed in detention at the Phan Dang Luu Detention Facility No. 4, located in Binh Thanh district, Ho Chi Minh City. He has now been in pretrial detention for nearly 18 months.

8. According to the source, Mr. Vinh's health has seriously deteriorated since his arrest as a result of continuous interrogation and inhumane treatment during his detention. Mr. Vinh appears to be thin and unhealthy.

9. On 5 December 2017, the source provided an update on the case, noting that the security forces of Ho Chi Minh City had confirmed that they had completed their investigation against Mr. Vinh and had submitted the results to the People's Procuracy. The police recommended that Mr. Vinh be prosecuted for attempting to overthrow the Government, an offence under article 79 of the 1999 Penal Code.

10. The source claims that, since Mr. Vinh's arrest, the authorities in Ho Chi Minh City have harassed his family, which has forced his wife to leave the family business and seek alternative employment in order to support the family and to provide Mr. Vinh with additional food while he is in detention.

11. The source submits that Mr. Vinh was arrested because of his peaceful political activities, as he participated in many peaceful demonstrations. This included demonstrations against alleged violations by China of the sovereignty of Viet Nam in the South China Sea. It also included peaceful protests against the alleged illegal discharge into Vietnamese waters of toxic industrial waste from the steel plant operated by the Formosa Plastic Group, which has caused a significant adverse environmental impact in four central provinces. In addition, Mr. Vinh has provided assistance to other social activists.

12. On 15 July 2016, Mr. Vinh founded the Coalition of Self-Determined Vietnamese People, aimed at promoting multiparty democracy. According to the source, Mr. Vinh made a public statement that all major issues in the country should be decided by the people through referendums. The source notes that, a few days prior to being arrested, Mr. Vinh declared that he would leave the organization. The source argues that Mr. Vinh's activities were in accordance with the 2013 Vietnamese Constitution and with the Covenant.

Response from the Government

13. On 13 December 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 12 February 2018 about Mr. Vinh's current situation. The Working Group also requested the Government to clarify the legal provisions justifying his continued deprivation of liberty, as well as their compatibility with the obligations of Viet Nam under international human rights law. Moreover, the

Working Group called upon the Government to ensure Mr. Vinh's physical and mental integrity.

14. On 9 February 2018, the Government requested that the deadline be extended. The extension was granted, and a new deadline set for 15 March 2018. The Government replied to the regular communication on 14 March 2018.

15. In its response, the Government notes that Mr. Vinh played a leading role in the establishment of the Coalition of Self-Determined Vietnamese People, the object and purposes of which contravened the Constitution, as they aimed at overthrowing the State administration. Mr. Vinh was arrested and prosecuted for violations of the law, not for his participation in demonstrations or other activities to promote human rights.

16. On 6 November 2016, the Ho Chi Minh City police executed an arrest warrant (No. 02/LBKC) and a search warrant (No. 07/LKXKC) against Mr. Vinh. The execution of those warrants was undertaken as part of the due process of law and in conformity with the procedures stipulated in the Criminal Procedure Code, and was carried out in the presence of the local authorities and Mr. Vinh's family. The authorities kept a record of the arrest, the search and the confiscation of evidence. On 14 November 2016, the police issued a decision to initiate criminal proceedings (No. 11/KTBC) and a decision to detain Mr. Vinh (No. 17/LTG-ANDT-D2) for his acts aimed at overthrowing the State administration, in violation of article 79 of the Penal Code. Since Mr. Vinh's arrest, two decisions were issued to extend his detention for the purposes of the ongoing investigation by the police. Those decisions were approved by the People's Procuracy of Ho Chi Minh City in accordance with the Criminal Procedure Code.

17. On 24 October 2017, the police completed its investigation and referred the case to the People's Procuracy for its consideration as to whether to proceed with the prosecution. The arrest, detention and investigation of Mr. Vinh was carried out under decisions approved by the competent People's Procuracy and in accordance with the Criminal Procedure Code.

18. During his arrest, search and detention, Mr. Vinh's rights were fully respected and he received the treatment that he was entitled to under national legislation. His detention conditions and treatment have been in accordance with the Law on Temporary Detention and Custody and Decree No. 120/2017/ND-CP of 6 November 2017. Those laws provide for the protection of the human rights of detainees in accordance with the socioeconomic situation of Viet Nam and its obligations under international human rights law. In particular, Mr. Vinh's family has been informed of the detention centre where Mr. Vinh has been detained, and recently visited him there. His family sends him additional supplies twice a month. Mr. Vinh has been given health care, and his health is currently normal. He has also been given daily meals as required by law and is able to participate in activities such as reading newspapers and listening to the radio.

19. Finally, the Government emphasizes that Mr. Vinh's participation in demonstrations or other activities to promote human rights were not the reason for his arrest and prosecution. He had caused public disorder on the streets numerous times. On 8 May 2016, the Ben Nghe police had issued an administrative violation and a fine of 200,000 Vietnamese Dong (approximately $9), but Mr. Vinh had refused to pay the fine. The Government submits that, in the light of the above facts, the allegations in the communication concerning Mr. Vinh are unfounded.

Further information from the source

20. On 19 March 2018, the Government's response was sent to the source for further comment. The source responded on 23 March 2018.

21. The source reiterates that, on 15 July 2016, Mr. Vinh established the Coalition of Self-Determined Vietnamese People, aimed at ensuring that government power is handed over to the people. The Coalition's work is in accordance with article 25 of the Constitution and the Covenant. On 6 November 2016, Mr. Vinh was beaten and taken away by the police without an arrest warrant. Two hours later, the police took him back to his house and showed an arrest warrant alleging subversion under article 79 of the 1999 Penal Code, and

searched his house. According to the source, the assault and the detention violated the 2013 Constitution and the Criminal Procedure Code. Mr. Vinh was held incommunicado from 6 November 2016 until 24 October 2017, when the authorities in Ho Chi Minh City stated that they had completed its investigation into his case. Mr. Vinh's incommunicado detention violated his right under the Criminal Procedure Code to have a lawyer present during the interrogations.

22. In an update, the source states that the Ho Chi Minh City People's Court has rejected the proposal of the City's Department of Public Security to prosecute Mr. Vinh under article 79 of the Penal Code. The Court returned the file, asking the police to further investigate the case. Mr. Vinh remains in police custody.

Discussion

23. The Working Group thanks the source and the Government for their submissions. The Working Group appreciates the cooperation and engagement of both parties in this matter.

24. In determining whether Mr. Vinh's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. The Government can meet this burden of proof by producing documentary evidence in support of its claims.[1] Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

25. The Working Group considers that the Government's response confirms several of the source's allegations, including that Mr. Vinh was detained in relation to his prosecution under article 79 of the Penal Code. It appears from the source's update that the Ho Chi Minh City People's Court has rejected the proposal to prosecute Mr. Vinh under article 79 of the Penal Code. However, the Working Group will consider article 79 in the present opinion, given that Mr. Vinh has been detained for nearly 18 months in relation to his alleged violation of that provision. The Working Group also notes some minor inconsistencies between the source's initial submission and its response to the Government's submission. These include new information in relation to the police having shown an arrest warrant alleging subversion under article 79 of the 1999 Penal Code upon their return to Mr. Vinh's house two hours after his arrest, and a correction that Mr. Vinh was held incommunicado from 6 November 2016 until 24 October 2017 (and not 12 November 2017, as stated in the original communication). The Working Group does not consider that either of those points affects the overall credibility of the source's claims.

26. The source alleges that Mr. Vinh was arrested on 6 November 2016 and his home was searched without receiving official notification of the reasons for the arrest and search, such as a warrant or other decision by a public authority. While the source acknowledges that the police returned two hours later with an arrest warrant, the source reiterates that they did not possess a warrant at the time Mr. Vinh was first arrested. In its response, the Government asserted that the Ho Chi Minh City police executed an arrest and search warrant against Mr. Vinh on 6 November 2016, in accordance with the Criminal Procedure Code. However, the Government could have, but did not, present evidence in support of its assertion. The Working Group finds that Mr. Vinh was arrested without an arrest warrant.

[1] See opinion No. 41/2013, in which the Working Group notes that the source of a communication and the Government do not always have equal access to the evidence, and frequently the Government alone has the relevant information. In that case, the Working Group recalled that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden to prove the negative fact asserted by the applicant is on the public authority, because the latter is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out". See Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*), ICJ, Judgment, 30 November 2010, para. 55.

As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.[2]

27. Furthermore, the source alleges, and the Government does not deny, that Mr. Vinh was arrested on 6 November 2016 and held incommunicado for nearly a year until 24 October 2017, when the investigation relating to Mr. Vinh was completed by the police. There is no indication in the information provided by either party that Mr. Vinh was brought before the courts or able to challenge his detention during that period. In fact, the Government states that Mr. Vinh's detention was extended twice and that the decisions to do so were approved by the People's Procuracy, not a judicial authority. This amounts to a violation of Mr. Vinh's right to be brought promptly before a court under article 9 (3) of the Covenant. Moreover, as the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.[3] The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty[4] and is essential in ensuring that detention has a legal basis. Given that Mr. Vinh was not able to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated. In addition, incommunicado detention for nearly one year effectively placed Mr. Vinh outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.[5]

28. In the absence of a judicial determination of the lawfulness of Mr. Vinh's deprivation of liberty, the Working Group finds that there was no legal basis established for his arrest and detention under articles 9 (3)–(4) of the Covenant. The Working Group therefore concludes that his deprivation of liberty is arbitrary and falls within category I.

29. Furthermore, the source alleges that Mr. Vinh has been deprived of his liberty solely for having exercised his rights in accordance with the Covenant and under the Constitution. The Government argues that Mr. Vinh's arrest and detention was unrelated to his participation in demonstrations and other human rights activities, and that he has been detained for having violated Vietnamese law (namely, article 79 of the Penal Code). As the Working Group has repeatedly stated in its jurisprudence, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with international human rights law.[6]

30. The Working Group has considered the application of national security and public order provisions of the Penal Code on numerous occasions, including its article 79.[7] In those cases, the Working Group found that article 79 was so vague and overly broad that it could result in penalties being imposed on individuals who had merely exercised their rights in a peaceful manner. The Working Group also pointed out in those cases that the Government had not provided evidence of any violent action on the part of the petitioners and that, in the absence of such information, the charges and convictions under article 79 could not be regarded as consistent with the Universal Declaration of Human Rights or the Covenant. The Working Group came to a similar conclusion in its report following a visit to Viet Nam in October 1994, noting that vague and imprecise national security offences did not distinguish between violent acts capable of threatening national security and the peaceful exercise of fundamental freedoms (See E/CN.4/1995/31/Add.4, paras. 58–60). It

[2] See, e.g., opinions No. 75/2017, No. 66/2017 and No. 46/2017.

[3] See, e.g., opinions No. 79/2017 and No. 28/2016.

[4] See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

[5] See, e.g., opinions No. 75/2017, No. 47/2017 and No. 46/2017.

[6] See, e.g., opinions No. 79/2017, No. 75/2017, No. 42/2012, No. 46/2011 and No. 13/2007.

[7] See, e.g., opinions No. 36/2018, No. 40/2016, No. 26/2013, No. 27/2012 and No. 46/2011, in relation to article 79 of the Penal Code. The Working Group understands that the Penal Code was amended in November 2015 and, despite some renumbering of provisions, the content of article 79 remained the same.

requested the Government to amend its laws in order to clearly define offences relating to national security and to state what was prohibited without any ambiguity.

31. In the present case, the Government did not suggest or submit any evidence to demonstrate that Mr. Vinh's conduct was violent. Accordingly, the Working Group considers that Mr. Vinh's participation in peaceful protests and speaking out in support of democracy in Viet Nam falls within the boundaries of the freedom of opinion and expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group recalls that the holding and expressing of opinions, including those which are critical of, or not in line with, official government policy, is protected under international human rights law. Similarly, by participating in peaceful protests and by establishing a coalition aimed at promoting democracy, Mr. Vinh was exercising his rights to freedom of peaceful assembly and association under article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the Covenant. Mr. Vinh was also exercising his right to take part in the conduct of public affairs under article 21 (1) of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.

32. The permitted restrictions on the freedom of expression, peaceful assembly and association under articles 19 (3), 21 and 22 (2) of the Covenant do not apply in the present case. The Government did not demonstrate how Mr. Vinh's participation in demonstrations and the expression of his views constituted a real threat to national security, public safety or public order, nor why bringing charges under article 79 of the Penal Code was a necessary, reasonable and proportionate response to Mr. Vinh's activities. In any event, in paragraph 5 (p) of its resolution 12/16, the Human Rights Council called upon States to refrain from imposing restrictions that are not consistent with international human rights law, including restrictions on discussion of government policies and political debate, reporting on human rights, peaceful demonstrations and expression of opinion and dissent. Moreover, as the Human Rights Committee has stated in paragraph 23 of its general comment No. 34 (2011) on the freedoms of opinion and expression:

> States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.

33. In addition to the Working Group's findings, there is widespread concern in the international community about the use of national security legislation in Viet Nam to restrict the exercise of human rights. That concern is reflected in at least 35 of the recommendations contained in the 2014 report of the Working Group on the Universal Periodic Review on Viet Nam, several of which relate to the review and repeal of vague national security offences in the Penal Code (including article 79), the release of political prisoners and protection of human rights defenders and the need for Viet Nam to implement the opinions of the Working Group on Arbitrary Detention.[8]

34. Furthermore, according to the United Nations Declaration on Human Rights Defenders, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and to meet or assemble peacefully for the purpose of promoting and protecting human rights.[9] The source's allegations demonstrate that Mr.

[8] See A/HRC/26/6, paras. 143.4, 143.34, 143.115–143.118, 143.144–143.171 and 143.173.

[9] See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, articles 1 and 5 (a). See also General Assembly resolution 70/161 of 17 December 2015, para. 8, in which the Assembly called upon States "to take concrete steps to prevent and put an end to the arbitrary arrest and detention of human rights defenders, and in this regard strongly urges the release of persons detained or imprisoned, in violation of the obligations and commitments of States under international human rights law, for exercising their human rights and fundamental freedoms".

Vinh was detained for having exercised his rights as a human rights defender, as enshrined under the Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.[10]

35. The Working Group concludes that Mr. Vinh's deprivation of liberty resulted from the exercise of his rights to freedom of opinion and expression, peaceful assembly and association, as well as his right to take part in the conduct of public affairs, and was contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. His deprivation of liberty was therefore arbitrary and falls within category II. The Working Group refers this matter to the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, and on the rights to freedom of peaceful assembly and of association.

36. As noted earlier, the Working Group considers that article 79 of the Penal Code is so vague and overly broad that it could, as in the present case, result in penalties being imposed on individuals who had merely exercised their rights under international law. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.[11] In the present case, the application of vague and overly broad provisions adds weight to the Working Group's conclusion that Mr. Vinh's deprivation of liberty falls within category II. Moreover, the Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

37. Given its finding that the deprivation of liberty of Mr. Vinh is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Vinh should take place in future. The Working Group considers that the information presented by the source discloses violations of Mr. Vinh's rights during his pretrial detention. Firstly, Mr. Vinh has been held in pretrial detention for nearly 18 months since his arrest on 6 November 2016. The Working Group recalls that according to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the rule, and as short as possible. In the present case, there appears to have been no individualized review of Mr. Vinh's situation, including the availability of alternatives to pretrial detention, such as bail, in violation of article 9 (3) of the Covenant. As noted earlier, there has also been no independent judicial oversight of Mr. Vinh's case, and the Procuracy is not an independent judicial authority.[12] If Mr. Vinh could not have been tried within a reasonable time, then he should have been entitled to release under article 9 (3) of the Covenant.

38. Furthermore, as noted earlier, Mr. Vinh was detained incommunicado for nearly one year from the time of his arrest on 6 November 2016 until 24 October 2017. Prolonged incommunicado detention creates the conditions that may lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and may itself constitute torture or ill-treatment.[13] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has argued that the use of incommunicado detention is prohibited under international law (see A/HRC/13/39/Add.5, para. 156).

39. The Working Group considers that the incommunicado detention of Mr. Vinh violated articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights and article 9 of the Covenant. The denial of contact between Mr. Vinh and his family for nearly one year also amounts to a violation of the right to have contact with the outside world under rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of

[10] See, e.g., opinions No. 79/2017, No. 75/2017 and No. 26/2017.
[11] See, e.g., opinion No. 41/2017, paras. 98–101.
[12] See E/CN.4/1995/31/Add.4, para. 57 (c).
[13] See A/54/44, para. 182 (a). See also General Assembly resolution 68/156 of 18 December 2013, para. 27.

Prisoners (the Nelson Mandela Rules) and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

40. During his incommunicado detention, Mr. Vinh was denied access to lawyers for nearly one year, including during the pretrial investigation, in violation of his right to legal assistance guaranteed by articles 10 and 11 (1) of the Universal Declaration of Human Rights, and article 14 (3) (b) of the Covenant. As the Working Group stated in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after the moment of apprehension, and such access shall be provided without delay (paras. 12 and 67). In the present case, the denial of access to legal assistance during the investigation is of considerable concern given that Mr. Vinh was facing heavy penalties following prosecution under the national security provisions in article 79 of the Penal Code.

41. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Vinh an arbitrary character according to category III.

42. Furthermore, the Working Group considers that Mr. Vinh was targeted because of his activities as a human rights defender, including his founding of a civil society organization that sought to promote democracy in Viet Nam. In its response, the Government acknowledged that Mr. Vinh had played a leading role in the establishment of the Coalition of Self-Determined Vietnamese People. The Working Group considers that it is no coincidence that Mr. Vinh was arrested and detained less than four months after founding that Coalition, and following his public statement that all major issues in the country should be decided by the people through referendums. Moreover, as the Government acknowledges, this is not the first time that Mr. Vinh's activities have been subject to the criminal law, as he had received a fine in May 2016 for causing "public disorder".

43. There appears to be a pattern in Viet Nam of targeting and detaining human rights defenders for their work, including activists who have participated in protests or attempted to raise awareness about issues relating to the South China Sea and the Formosa Steel Plant. The Working Group has made findings to this effect in recent years,[14] and finds the present case to be another example of the use of detention to silence human rights defenders. In addition, several special procedures mandate holders have called upon the Government to release activists detained for protesting the discharge of toxic chemicals by the Formosa Steel Plant in Ha Tinh in April 2016, stating:

> Imprisoning bloggers and activists for their legitimate work raising public awareness on environmental and public health concerns is unacceptable ... Authorities must ensure that Viet Nam's rapid economic expansion does not come at the expense of human rights, in particular those of local communities and workers ... These convictions not only violate the rights to freedom of expression of these individuals but also undermine the rights of everyone in Viet Nam to receive vital information on toxic pollution and to debate the best remedy for it and ultimately to hold those responsible for the disaster accountable.[15]

44. For these reasons, the Working Group finds that Mr. Vinh was deprived of his liberty on discriminatory grounds, that is, owing to his status as a human rights defender. His deprivation of liberty is arbitrary according to category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders for further consideration. Furthermore, given Mr. Vinh's work in defending the environment, particularly in protesting against the illegal discharge of toxic industrial waste in Vietnamese waters, the Working Group also refers this matter to: (a) the Special

[14] See, e.g., opinions No. 75/2017 (Tran Thi Nga), No. 27/2017 (Nguyen Ngoc Nhu Quynh), No. 40/2016 (Nguyen Dang Minh Man) and No. 46/2011 (Tran Thi Truy and others).

[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22696&LangID=E.

Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and (b) the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

45. The Working Group wishes to express its serious concern about Mr. Vinh's health. The source reports that Mr. Vinh's health has seriously deteriorated since his arrest as a result of continuous interrogation and inhumane treatment during his pretrial detention. In its response, the Government simply stated that Mr. Vinh received health care and was in normal health, without providing any evidence. According to article 10 (1) of the Covenant and rules 1 and 24 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including enjoying the same standards of health care that are available in the community. Given that Mr. Vinh was held in incommunicado detention for nearly a year and has now been in custody for nearly 18 months in total, and that the prosecution against him under article 79 of the Penal Code was rejected by the Ho Chi Minh City People's Court, the Working Group calls upon the Government to release him immediately and unconditionally.

46. Moreover, the Working Group wishes to make a further observation on the present case. The source alleged that the authorities in Ho Chi Minh City had harassed Mr. Vinh's family, which had forced his wife to leave their business and seek alternative employment in order to support her family and to provide Mr. Vinh with additional food while he was in detention. Those allegations were part of the regular communication sent to the Government, but it did not address them in its response. Accordingly, the Working Group accepts the allegations as established as part of the source's prima facie case. The Working Group reiterates that it is not acceptable to subject family members of a detained person to any form of harassment or intimidation. It is the responsibility of the Government to protect Mr. Vinh and his family, and the Working Group urges the Government to conduct a thorough investigation into the alleged incidents and to prosecute the offenders.

47. The present case is one of several cases that have been brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons in Viet Nam.[16] The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.[17] The Working Group would welcome the opportunity to engage constructively with the Government to address issues such as the use of imprecise provisions of the Penal Code to prosecute individuals for the peaceful exercise of their rights, which continues to result in the arbitrary deprivation of liberty in Viet Nam.

48. On 15 April 2015, the Working Group sent a request to the Government to undertake a country visit, as a follow up to its earlier visit to Viet Nam in October 1994. In its response of 23 June 2015, the Government informed the Working Group that it planned to invite other special procedure mandate holders who had already requested a visit, but that it would consider issuing an invitation to the Working Group at an appropriate time. On 6 April 2017, the Working Group reiterated its request for a country visit and awaits a positive response. Given that the human rights record of Viet Nam will be subject to review during the third cycle of the universal periodic review, in January 2019, an opportunity exists for the Government to enhance its cooperation with the special procedures and to bring its laws into conformity with international human rights law.

Disposition

49. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Luu Van Vinh, being in contravention of articles 2, 6, 7, 8, 9, 10, 11 (1), 19, 20 and 21 (1) of the Universal Declaration of Human Rights

[16] See, e.g., opinions Nos. 36/2018, 79/2017, 75/2017, 27/2017, 26/2017, 40/2016, 46/2015, 45/2015, 33/2013, 26/2013, 42/2012, 27/2012, 46/2011, 24/2011, 6/2010 and 1/2009.

[17] See, e.g., opinion No. 47/2012, para. 22.

and articles 2 (1) and (3), 9, 14, 16, 19, 21, 22, 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

50. The Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation of Mr. Vinh without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

51. The Working Group considers that, taking into account all the circumstances of the case, in particular the risk of harm to Mr. Vinh's health, the appropriate remedy would be to release Mr. Vinh immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

52. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Vinh and to take appropriate measures against those responsible for the violation of his rights.

53. The Working Group requests the Government to bring its laws, including any equivalent of article 79 in the revised Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Viet Nam under international human rights law.

54. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to: (a) the Special Rapporteur on freedom of expression; (b) the Special Rapporteur on freedom of peaceful assembly and of association; (c) the Special Rapporteur on human rights defenders; (d) the Special Rapporteur on hazardous substances and wastes; and (e) the Special Rapporteur on human rights and the environment, for appropriate action.

55. The Working Group encourages the Government to incorporate the Model Law for the Recognition and Protection of Human Rights Defenders into its domestic legislation and to ensure its implementation.[18]

Follow-up procedure

56. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Vinh has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Vinh;

(c) Whether an investigation has been conducted into the violation of Mr. Vinh's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Viet Nam with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

57. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

58. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the

[18] The Model Law was developed in consultation with more than 500 human rights defenders from around the world and 27 human rights experts. It is available at www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf.

opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

59. The Government should disseminate through all available means the present opinion among all stakeholders.

60. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[19]

[*Adopted on 26 April 2018*]

[19] See Human Rights Council resolution 33/30, paras. 3 and 7.